

## **HEALTH AND SENIOR SERVICES**

### **PUBLIC HEALTH COUNCIL**

Chapter XIII of the State Sanitary Code

Childhood Lead Poisoning

#### **Proposed Readoption: N.J.A.C. 8:51**

Authorized by: Chair, Public Health Council, Robert M. Pallay, M.D., and

Clifton R. Lacy, M.D., Commissioner of Health and Senior Services.

Authority: N.J.S.A. 26:1A-7, 24:14A, 26:2Q-1 et seq. and 26:2-137 et seq.

Calendar Reference: Please see summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2004-232

Submit written comments by August 6, 2004 to:

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The agency proposal follows:

#### **Summary**

N.J.S.A. 24:14A et seq., which was enacted in 1971, gives local boards of health the primary responsibility of investigating reported cases of childhood lead poisoning. It gives the local board of health the broad authority to determine whether lead hazards exist and to require the removal of lead paint hazards wherever they are found.

The law also grants the Commissioner the authority to “prescribe rules and regulations...specifying methods of detection of lead in dwellings and standards for the repair of premises containing lead paint.” N.J.S.A. 24:14A-11. The Department exercised this authority by adopting Chapter XIII of the State Sanitary Code (N.J.A.C. 8:51) in July 1972. The purpose of Chapter XIII is to protect children who have been identified with elevated blood lead levels from further damage due to lead hazards.

Since its initial adoption, Chapter XIII has been amended several times. Its current form, which was adopted in May 1999, represents a complete re-write that updated the rules and made the rules congruent with federal and other State rules. These rules will expire on December 4, 2004, pursuant to N.J.S.A 52:14B - 5.1c. The Department is, therefore, proposing to readopt these rules without change so that local health departments can continue to protect children by providing lead hazard investigations.

The rules being proposed for adoption are summarized below:

N.J.A.C. 8:51-1 contains the general provisions: scope, purpose and definitions of terms.

N.J.A.C. 8:51-2 contains provisions concerning screening children for lead poisoning and case management of children with elevated blood lead.

N.J.A.C. 8:51-3 contains the reporting requirements for laboratories and local boards of health.

N.J.A.C. 8:51-4 contains the requirements for environmental intervention whenever a child is determined to have elevated blood lead.

N.J.A.C. 8:51-5 contains the methods for determining the presence of lead in dwelling units.

N.J.A.C. 8:51-6 defines what conditions constitute a lead hazard that requires abatement.

N.J.A.C. 8:51-7 specifies the procedures for abatement of lead hazards.

N.J.A.C. 8:51-8 contains the standards for reinspection and approval of the completion of abatement of lead hazards.

N.J.A.C. 8:51-Appendix I contains a questionnaire to be used in the course of an investigation of a potential lead hazard to assist the inspector in discovering lead hazards in the environment of a child with elevated blood lead.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30 – 3.3 (A) (5).

### **Social Impact**

Lead is a heavy metal that has been widely used in industrial processes and consumer products. When absorbed into the human body, lead affects the blood, kidneys and nervous system. Lead's effects on the nervous system are particularly serious and can cause learning disabilities, hyperactivity, decreased hearing, mental retardation and possible death. Children who have suffered from the adverse effects of lead exposure for an extended period of time are frequently in need of special health and education services in order to assist them to develop to their potential as productive members of society.

The primary method for lead to enter the body is the ingestion of lead containing substances by children six months through six years of age. Some common lead containing substances that are ingested or inhaled by children include:

- lead-based paint;
- dust and soil in which children play;
- tap water;
- food stored in lead soldered cans or improperly glazed pottery; and
- some folk remedies containing lead.

Because these and other lead containing substances are present throughout the environment in New Jersey, all children in the State are at risk. Some children, however, are at particularly high risk due to exposure to high dose sources of lead in their immediate environment. These potential high dose sources include leaded paint that is peeling, chipped, or otherwise in a deteriorated condition, lead-contaminated dust created during removal or disturbance of leaded paint in the process of home renovation, and lead contaminated dust brought into the home by adults who work in an occupation that involves lead or materials containing lead, or who engage in a hobby where lead is used.

In recognition of the danger that lead-based paint presented to children, such paint was regulated for residential use in New Jersey in 1971 and banned nationwide in 1978. These actions have effectively reduced the risk of lead exposure for children who live in houses built after 1978, but any house built

before 1978 may contain leaded paint. Further, the highest risk for children is found in houses built before 1950 when paints contained a very high percentage of lead. According to the 2000 U.S. Census, there are nearly one million housing units in New Jersey that were built before 1950, 30 percent of all housing in the state. Every county has more than 10,000 housing units before 1950.

Nearly 1,000 children each year are identified with blood lead levels greater than or equal to 20 ug/dL. The well-being of these children is dependent on early detection of elevated blood lead levels, followed by prompt medical and environmental intervention. New Jersey statute gives to local boards of health the responsibility for investigating cases of lead poisoning in children and the authority to order the removal of any lead hazards they detect. The rules contained in Chapter XIII specify the procedures to be followed by local boards of health and their professional staff in investigating cases of lead poisoning in children, and abatement of lead hazards. They provide local health department inspectors with standard procedures for identifying lead hazards and uniform standards for property owners to follow in removal of these hazards, thus enabling them to effectively and efficiently carry out their statutory responsibilities.

### **Economic Impact**

Enforcement of these rules does impose costs on local boards of health for the investigation of reported cases of lead poisoning and enforcement of hazard abatement orders. These costs are only partially covered by Public Health Priority Funds and Department of Health and Senior Services grants. All

of these costs are associated with actions required by N.J.S.A. 24:14A-1 et seq., and it is the position of the Department that, given the current state of knowledge about lead hazards, the intent of the statute to protect children cannot be achieved without this testing. The Division of Medical Assistance and Health Services of the New Jersey Department of Human Services has established reimbursement to local boards of health for inspections performed in response to a report of an elevated blood lead level in a child who is enrolled in Medicaid. This revenue partially offsets the costs created by the requirements of Chapter XIII.

Ultimately, detection of lead hazards requires property owners to bear the cost of removal of these hazards. These costs can vary widely, depending on the extent of the hazards found. The cost of lead hazard abatement can range from a few hundred dollars for spot repairs and clean-up to \$15,000 or more for removal of all lead paint from a unit. However, because Chapter XIII emphasizes lead hazard detection and removal, in some cases the cost of abatement is less than if removal of all lead paint were required.

### **Federal Standards Statement**

The rules being proposed for readoption do not impose any requirements that exceed those imposed by Federal law or regulations. These rules are based on the U.S. Centers for Disease Control and Prevention's policy statement, "Preventing Lead Poisoning in Young Children", the U.S. Department of Housing and Urban Development's "Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing", and regulations adopted by the U.S. Environmental

Protection Agency (40 C.F.R. 745.61 to 745.69, and 40 C.F.R. 141). Where applicable, these Federal standards are incorporated by reference. Therefore, a Federal standards analysis is not required.

### **Jobs Impact**

These rules proposed for readoption require environmental inspections to be conducted by the local health department whenever a child is identified with elevated blood lead. These may be conducted by a person with a Lead Inspector/Risk Assessor permit. Local health departments may either hire additional staff to perform these inspections, or they may use existing staff who will do these inspections in addition to other types of sanitary code inspections. The total number of persons employed as a result of these rules is unknown. These rules also require the abatement of any lead hazards identified in the course of these inspections. The performance of these abatements may create employment opportunities for a person with Lead Abatement Supervisor and Lead Abatement Worker permits.

### **Agricultural Industry Impact**

The rules proposed for readoption will have no impact on agriculture in New Jersey.

### **Regulatory Flexibility Analysis**

These rules specify actions to be taken by local boards of health, However, the enforcement of these rules by local boards of health may require corrective actions to be taken by the owners of rental properties in which children

with elevated blood lead reside. Some of this regulated group may be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq.

The cost of compliance with these rules cannot be accurately estimated, due to the varying impact of the requirements on each individual property owner. Depending on the condition of the property and the degree of the hazard identified, some property owners may be able to comply with little or no expense. Others may incur expenses for the removal and disposal of leaded paint, building components (windows, doors) covered with leaded paint, and associated clean-up costs. Depending on the extent of the work required, abatement of lead paint hazards can cost anywhere from less than \$100.00 to \$15,000. State assistance with the cost of lead hazard abatement may be available from the Lead Hazard Control Assistance Fund to be established by the New Jersey Department of Community Affairs under the provisions of Public Law 2003, c.311.

At the same time, these rules may potentially benefit another group of small businesses. Public Law 1993, c.288, requires that all lead abatement work must be done by business firms licensed by the New Jersey Department of Community Affairs, using workers who have permits from the New Jersey Department of Health and Senior Services. Many of the contractors who will perform this work may be considered small businesses, as defined in N.J.S.A. 52:14B-16 et seq.

The presence of lead paint in situations that create a health hazard, as defined in this rule, creates a serious threat to the health and well-being of



children exposed to the hazard. It is not possible to impose less restrictive criteria without leaving children exposed to these hazards. In previous adoptions of this rule, the Department determined that, in the interest of the health and welfare of children potentially affected by lead paint hazards, it was not appropriate to establish differential requirements for small businesses. The proposed readoption of these rules will not impose any additional burden on small businesses beyond those already imposed by the existing rules.

### **Smart Growth Impact**

The rules proposed for readoption will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full Text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:51